

in June  
1955

June 3

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CONCORD, N.H.

Mr. Alfred S. Cloues  
State Treasurer  
State House  
Concord, New Hampshire

Dear Sir:

In a letter of May 20, 1955 you asked our advice whether you might at the request of a town refund to a taxpayer the 1953 and 1954 special head tax paid by her. Your inquiry arises out of circumstances substantially as follows. The taxpayer became seventy years old in 1952. The selectmen were presumably unaware of this fact, and in 1953 and in 1954 they assessed the tax as required in chapter 40 of the Laws of 1953. Those the taxpayer paid without protest, and the sums paid were forwarded to your office as required in section 9 of the chapter cited. Thereafter, probably in May of this year, the taxpayer asked the refund of her selectmen, and these officials have inquired if the refund may be made from the Treasury, the money having been paid in by the town.

We must advise that the law does not permit you making the refund requested.

This conclusion is based upon the absence of any provision in the statute specifically authorizing your making the refund, and is a consequence of section 16 of chapter 40 requiring you to deposit the taxes received in the general funds of the state. Funds so deposited cannot be paid out, as you are aware, without a legislative appropriation and a warrant under the hand of the Governor.

It is true that under the statute which imposed the head tax, collected in the years 1951 and 1952, i.e., Laws 1951, chapter 237, specific provision was made for a refund out of the State Treasury in case of an abatement made by the selectmen after the payment of a tax to the state. The lack of such provision in the present law, applicable to the head taxes in question -- in contrast to

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its inclusion in the previous law, clearly shows the legislative intention that in the case of such current taxes no refund shall be made after payment into the Treasury.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW/T